

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

FILED

JAN 13 2009

RICKY BERNARD THORNTON,)
Petitioner,)
vs.)
WALTER DINWIDDIE, Warden,)
Respondent.)

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY W.H. DEPUTY

No. CIV-07-1321-W

ORDER

On December 10, 2008, United States Magistrate Judge Doyle W. Argo issued a Report and Recommendation in this matter and recommended that the Motion for Summary Judgment filed pursuant to Rule 56, F.R.Civ.P., by respondent Walter Dinwiddie, Warden, be denied. The parties were advised of their right to object to the Report and Recommendation, but no objections have been filed within the allotted time.

In support of his request for judgment in his favor, Dinwiddie had argued that the Petition for Writ of Habeas Corpus ("Petition") filed by petitioner Ricky Bernard Thornton was untimely filed. Magistrate Judge Argo found otherwise, and upon review of the record, the Court concurs with Magistrate Judge Argo's findings regarding statutory tolling under title 28, section 2244(d)(2) of the United States Code and his suggested disposition of Dinwiddie's Motion for Summary Judgment.

Accordingly, the Court

(1) ADOPTS the Report and Recommendation [Doc. 22] issued on December 10, 2008;

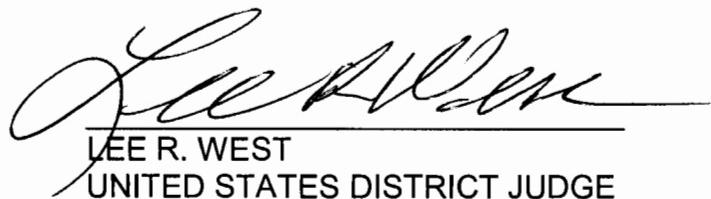
(2) DENIES Dinwiddie's Motion for Summary Judgment [Doc. 15] filed on September 17, 2008;

(3) DIRECTS Dinwiddie to respond to the merits of Thornton's Petition within twenty (20) days of the date of this Order;

(4) DENIES Thornton's Motion for Costs and Attorney's Fees¹ [Doc. 23] file-stamped December 19, 2008; and

(5) the referral in this matter having not been terminated, COMMITS this matter to Magistrate Judge Argo for further proceedings.

ENTERED this 13th day of January, 2009.



LEE R. WEST
UNITED STATES DISTRICT JUDGE

¹Relying on Rule 56(g), F.R.Civ.P., which pertains to affidavits submitted in bad faith or solely for delay, and alternatively, on Rule 11, F.R.Civ.P., Thornton has sought costs in the amount of \$2.76 (\$1.50 for photocopying + \$1.26 for postage), fees in the amount of \$30.00 for time (6 hours) spent for research and preparation of the objection he filed in response to Dinwiddie's Motion for Summary Judgment, but see Report and Recommendation [Doc. 22] at 1 n.1, and \$11,090.00 for "extended time of imprisonment." Upon review of Dinwiddie's Motion for Summary Judgment, to which no affidavits were attached, and without deciding whether the types of fees and costs requested are appropriately or properly recoverable, the Court, based upon the record, finds no merit to Thornton's Motion for Costs and Attorney's Fees.